

*Before the*  
**FEDERAL COMMUNICATIONS COMMISSION** JAN 27 1997  
 Washington, DC 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
Price Cap Performance Review	)	CC Docket No. 94-1
for Local Exchange Carriers	)	
	)	
Transport Rate Structure	)	CC Docket No. 91-213
and Pricing	)	
	)	
Usage of the Public Switched	)	
Network by Information Service	)	CC Docket No. 96-263
and Internet Access Providers	)	

**COMMENTS OF MEDIA ACCESS PROJECT, CENTER FOR  
 DEMOCRACY AND TECHNOLOGY, THE BENTON FOUNDATION  
 ELECTRONIC FRONTIER FOUNDATION, AND VOTERS  
 TELECOMMUNICATIONS WATCH**

Media Access Project, the Center for Democracy and Technology, the Benton Foundation, Electronic Frontier Foundation, and Voters Telecommunications Watch (hereinafter collectively referred to as "Commenters"), respectfully submit the following comments in response to the Commission's *Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry*, released December 24, 1996 in the above referenced docket ("*NPRM*"). These organizations represent the interests of the public, including both current and future users of the Internet and similar interactive computer networks. Specifically, Commenters address these comments to the portions of the *NPRM* that consider whether to "permit incumbent LECs to assess interstate access charges on information service providers." *NPRM* at ¶¶282-90.

**I. THE COMMISSION SHOULD CONSIDER THE EFFECTS OF THIS PROCEEDING ON THE ABILITY OF ALL AMERICANS TO ENGAGE IN ONLINE SPEECH AND TO HAVE EQUAL ACCESS TO INFORMATION.**

Commenters urge the Commission to keep in mind that the issues presented in this section

of the *NPRM* have an impact which goes far beyond the profitability of the industries involved or the alleged congestion to the public switched voice network. The Commission has erroneously focused only on the conflict between incumbent LECs and the information services industry, and has downplayed the needs of information service *users*.<sup>1</sup> In the *NPRM*, the Commission notes that the information services *industry* has grown dramatically, and recites the policy of the Telecommunications Act of 1996, Pub. L. 104-104 (1996) ("Act"), as well as its own longstanding goal, to avoid unnecessary regulation of this industry. *NPRM* at ¶282. It posits, however, that there may be an increasing effect from such services on the public switched network, and it asks how its rules can provide "incentives for investment and innovation in the underlying networks that support the Internet and other information services." *Id.* at ¶¶282-83. Moreover, in tentatively concluding to continue to apply the existing rate structure to ISPs, it states that a central concern is the "potentially detrimental effects" on the information services industry. *Id.* at ¶288.

What is absent from this discussion is any mention of the effects *on the citizens* who use or benefit from the use of information services. Indeed, the Internet has assumed an important and growing role in the social, economic, and political life of its users. Thus, if the Commission regulates the information services industry, it would also regulate an arena of citizen speech and political discourse; a measureless source of information and entertainment; and an efficient, international means of commerce.<sup>2</sup> Furthermore, Commenters believe, under the Communica-

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<sup>1</sup>Indeed, to the extent that greater, more robust speech rights and participation in civic activities benefit all members of society, this decision will affect *all* citizens.

<sup>2</sup>See Appendix A for a list of examples of politically oriented web sites and newsgroups, which is also available online at: <[http://www.cdt.org/policy/terrorism/internet\\_bomb](http://www.cdt.org/policy/terrorism/internet_bomb)>

tions Act's mandate that the FCC ensure that common carrier rates remain "just and reasonable," 47 USC §201, the Commission cannot limit the debate by overlooking the impact on the users of the Internet. Thus, the Commission must also consider how a change in the rate structure for ISPs would affect this new means of expression and communication, and whether it would limit the ability of lower-income Americans to access the Internet.

## **II. THE COMMISSION SHOULD CONTINUE TO APPLY THE EXISTING PRICING STRUCTURE TO INFORMATION SERVICES PROVIDERS.**

Commenters applaud the Commission's tentative conclusion that the existing pricing structure for information services providers "should remain in place at this time." *NPRM* at ¶283. As it has observed throughout the *NPRM*, the Commission notes that the existing access charge regime "includes non-cost-based rates and inefficient rate structures," and should not be extended to an additional class of users, especially the still-evolving information services industry. *Id.* at ¶288.

Commenters agree with this conclusion that, on legal and policy grounds, the Commission should continue to exempt ISPs from the current access charge structure. Imposing these fees would risk quashing the broad participation and high accessibility of what has become a highly important mode of speech. The Commission should only discontinue the exemption - if at all -

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.test.html#appendixA > . The significance of the Internet as a means of speech and source of information has been recognized recently both by the courts and Congress. "It is no exaggeration to conclude that the Internet has achieved, and continues to achieve, the most participatory marketplace of mass speech that this country - and indeed the world - has yet seen." *ACLU v. Reno*, 929 F.Supp. 824 (E.D. Pa. 1996)(opinion of Dalzell, J.). Congress found in the 1996 Act that the Internet and other computer services "represent an extraordinary advance in the availability of educational and informational resources to our citizens....[and] offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity." Act, §230(a)(1), (a)(3).

after careful consideration, and in any event not until after the existing access charge structure is reformed.

The Internet has become a significant mode of democratic participation, and imposing access charges could have enormous detrimental impact on its market penetration as well as its egalitarian and open nature. See *NPRM* at ¶288. These usage-based fees might be borne by ISPs, at the risk of causing industry fallout, or passed on to consumers, which could diminish total use and especially limit use by lower-income citizens.<sup>3</sup> In either event, this is a major decision with far-reaching implications not only for the industry, but for citizen speech and access to information.

By many accounts, the Internet has experienced rapid growth precisely because government has not extensively regulated it. See Act, §230(a)(4). More specifically, it has allowed service providers to compete freely with flexible pricing options that respond to user needs. This flexibility and competition is beneficial, especially in such a rapidly growing and evolving industry. The Commission should, therefore, be very careful before imposing a new pricing structure, and should closely examine its need and probable impact.

The *Notice of Inquiry* which was initiated as part of the *NPRM* proposes to conduct exactly this type of exacting scrutiny, *NPRM* at ¶¶311-18, and Commenters believe it would be a better forum to examine these questions. Indeed, the Commission heard a large body of testimony at its Bandwidth Forum on January 23, 1997, that shows that there are many broad, complex questions surrounding capital investments, technology, and the economics of both voice networks

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<sup>3</sup>Commenters wish to clarify, however, that this statement addresses both possible effects of the imposition of fees, and makes no attempt at this time to estimate the probability whether such fees would be borne by ISPs or passed on to consumers.

and interactive computer networks. These are the type of questions, and will have the type of long term implications, that merit the careful study of a separate proceeding.

Before determining whether to apply access charges to ISPs, the Commission should wait until it has better determined how it will reform these charges as a whole. Existing fees have been widely denounced as inefficient and unfair, and the *NPRM* proposes to make several changes in their structure. It would be arbitrary in the extreme to impose these charges on a fledgling industry, especially when their structure is in flux.

**CONCLUSION**

In light of the likely change in access rates; the undetermined impact upon the public switched networks, ISPs, and Internet speakers and users; and the rapidly changing nature of the Internet and data network technologies, application of the interstate access charge regime to ISPs would be fraught with risk, at least at this time. Commenters agree with the commission's assessment that, "[There is] no reason to extend this regime to an additional class of users..."

Respectfully submitted,

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## APPENDIX A

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### Appendix A -- Politically Oriented World Wide Web Sites

#### General Resource:

- **Political Participation Project**

<http://www.ai.mit.edu/projects/ppp/home.html>

The Political Participation Project is a research program investigating how computer networks can be used to facilitate political participation. The Project's mission is to design networked, interactive media that improve citizens' participation in the democratic process. The Project, affiliated with the Intelligent Information Infrastructure Project at MIT, is non-profit and non-partisan.

- **Project Vote Smart**

<http://www.peak.org/~votesmrt/>

Project Vote Smart is a voter's self-defense system that provides the voter with factual information on candidates and elected officials.

- **Interactive Democracy**

<http://www.teleport.com/~pcllgn/id.html>

A free service that provides a gateway to allow individuals to send email messages to a list of representatives of government and the media.

- **NewtWatch**

<http://www.cais.com/newtwatch/>

NewtWatch is a new web service designed to be your resource on Speaker of the House Newt Gingrich. Contains information on Gingrich's voting records, political contributions, legislative effort, and more.

- **Clinton Watch**

<gopher://dolphin.gulf.net:3000/>

Clinton Watch is a political column on the Internet devoted to a critical analysis of the policies and actions of the Clinton administration.

### **Conservative Sites:**

- **The Conservative Link**

<http://www.moscow.com/~bmdesign/tcl/conintro.html>

The Conservative Link is a page for people who share the conservative point of view.

- **The Right Side of the Web**

<http://www.clark.net/pub/jeffd/index.html>

The Right Side of the Web is a unique listing of resources for political conservatives. The page contains links to other conservative oriented sites, email lists, publications/editorials, and links to other political groups (including liberal groups).

### **Liberal Sites:**

- **The Left Side of the Web**

<http://paul.spu.edu/~sinnfein/progressive.html>

The Left Side of the Web -- Links to liberal related resources, newsgroups, publications, and file archives



- **Progressive Page**

<http://www.io.org/~spamily/SocPolEnv.html>

A collection of links for progressives, feminists, liberals, and anyone else who's interested.

**Political Organizations:**

- **The Center For Democracy And Technology**

<http://www.cdt.org/>

CDT is a non profit public interest organization working to develop and advocate public policies that preserve and enhance democratic values in new communications media.

- **The Progress and Freedom Foundation**

<http://www.pff.org/>

The Progress and Freedom Foundation a non-profit organization dedicated to creating a positive vision of the future.

- **Internet Headquarters for the Republican Primary**

<http://www.umn.edu/~sears/primary/main.html>

Internet Headquarters for the Republican Primary - info on who are running, who may run, and who's not running for President in the Republican party.

- **Democratic Senatorial Campaign Committee**

<http://www.dscc.org/d/dscc.html>

Over the next several months, look for new information about potential candidates, impact issues in 1996, and other DSCC activities.

- **United We Stand America**

<http://www.telusys.com/uwsa.html>

An educational, nonpartisan, nonprofit organization designed to inform the public about the important issues facing our country and to give our members a voice in the way we are governed.

- **Rock The Vote**

<http://www.iuma.com/RTV/>

Rock The Vote - national organization for young people based on one simple idea: young Americans deserve to be heard.

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## Appendix B -- Politically Oriented Usenet Newsgroups

Usenet newsgroups are analogous to a community bulletin board, only they are available worldwide to anyone who has access to the Internet. There are more than 4,000 usenet news groups available on the Internet, and each covers a different topic.

Although some specific groups are moderated, usenet as a whole is not organized or administered by any one individual or organization. Adding and removing discussion forums is governed by consensus among system administrators.

Below is a list of just a few of the usenet newsgroups dedicated to

- talk.abortion -- discussion and debate on the issue of abortion
  - talk.politics.guns -- debate pro and con on gun-control issues
  - alt.activism -- a discussion forum for political activists
  - alt.censorship -- discussion on the topic of censorship
  - alt.feminism -- discussion on feminist issues
  - alt.politics.clinton -- general discussion and debate about the President and his policies
  - alt.politics.perot -- general discussion about the former presidential candidate and his policies
  - alt.politics.democrat -- discussion and debate about Democratic party figures and policies
  - altl.politics.usa.republican -- discussion and debate about Republican party figures and policies
  - alt.rush-limgaugh -- a forum for fans and foes of the talk show host
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1 DISKETTE ( <sup>96.</sup> with  
96-262 )